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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,809	01/15/2002	Ken Shoemaker	2207/12020	4746

25693 7590 10/03/2007
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EXAMINER

VO, LILIAN

ART UNIT	PAPER NUMBER
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2195

MAIL DATE	DELIVERY MODE
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10/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

MN

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/047,809

Applicant(s)

SHOEMAKER ET AL.

Examiner

Lilian Vo

Art Unit

2195

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: None.
- Claim(s) objected to: None.
- Claim(s) rejected: 1 - 28.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) _____
13. ☐ Other: _____.

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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

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Examiner
Art Unit: 2195

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive for the reasons set forth below.

With respect to applicant's remark that "all information does not necessarily include the width of an execution unit" (page 9 5th paragraph), applicant to note that the rejection is based on the claim limitation in which multi-thread scheduler is to determine the width of the execution unit. This passage discloses schedule logic decides which instructions to launch to the execution units (multiple execution units) in which order. In other words, the scheduling to the execution unit decision is based on the compiled information from these instructions. Some instructions may require more bandwidth of the execution unit than the other. Shiell discloses that microcode is scheduled first, followed by the assignment of Aops to those slots not used in the scheduling of microcode, scheduler determines if any current non-microcode Aops are direct to the execution units other than those utilized by the microcode instructions, and if so, schedules those Aops to the extent that resources are available (col. 10 lines 30 - 36). Shiell also discloses that the scheduler reads up to four Aops from its queue from instruction stream and assigns these Aops to the appropriate execution units (col. 5 lines 47 - 49). It would have been obvious for one of an ordinary skill in the art at the time the invention was made that the width of the execution unit is been taking into consideration by the scheduler. Further, based on the disclosures as stated above, Shiell's scheduler is fully capable of determining the width of the execution unit when scheduling those instructions.

If applicant believes these citations do not disclose such teaching or provide proper meaning of the claimed invention, applicant must provide a clear definition and the location of these limitations in the specification.

As noted by the Court of Customs and Patent Appeals, "argument cannot take the place of evidence." *In re Langer*, 503 F.2d 1380, 1395, 183 USPQ 288, 299 (CCPA 1974). *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785 788 (Fed. Cir. 1984). Applicants have not submitted sufficient evidence to rebut the strong prima facie case of obviousness established by Examiner.

Furthermore, the examiner has interpreted the claim language as broadly as possible. It is also the examiner's position that applicant has not yet submitted claims drawn to limitations which define the method and system of applicant's disclosed invention in a manner that distinguishes over the prior art. Failure for applicant to significantly narrow definition/scope of the claims implies the applicant intends broad interpretation be given to the claims. The examiner thus maintains the rejections.